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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,592	04/19/2006	Marc Varlet	3315535	7258
7590 Gerald E Helget Suite 2200 80 South Eighth Street Minneapolis, MN 55402			EXAMINER PARSLEY, DAVID J	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 03/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,592

Applicant(s)

VARLET, MARC

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-850)
Paper No(s)/Mail Date 9-19-06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 5-18-06 into the application file is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it begins with an implied statement. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations of “the mound cover” in line 6 of claim 4 and in lines 1 and 3 of claim 9 lack antecedent basis.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1- are rejected under 35 U.S.C. 102(b) as being anticipated by GB Patent No.

775,174.

Referring to claim 1, the British patent discloses a method of producing a mound of earth on the ground comprising, a step of filling a mold - at 1-10,12,13, with earth - see figures 1-4, as

step of placing a cover plate - at 11 on the mold - see figures 1-2 and 4, as step of turning over the mold on the ground - see figure 2, a step of removing the cover plate - see figure 2, a step of removing the mold - see figure 2, a recess - at 15, is produced at the top of the mound by the mold by partial removal of the mold so as to leave clear access to the recess - see figure figures 1-4, during the molding of the mound by the mold.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent in view of U.S. Patent No. 5,367,822 to Beckham.

Referring to claim 2, the British patent discloses a method of producing a mound of earth on the ground comprising, a step of filling a mold - at 1-10,12,13, with earth - see figures 1-4, as step of placing a cover plate - at 11 on the mold - see figures 1-2 and 4, as step of turning over the mold on the ground - see figure 2, a step of removing the cover plate - see figure 2, a step of removing the mold - see figure 2, a recess - at 15, is produced at the top of the mound by the mold by partial removal of the mold so as to leave clear access to the recess - see figure figures 1-4, during the molding of the mound by the mold. The British patent does not disclose the step of placing a protective mound cover covering the mound. Beckham does disclose placing a cover

- at 2, over the mound - see figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Claims 3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as applied to claim 1 above, and further in view of JP Patent No. 2-312522.

Referring to claim 3, the British patent does not disclose the recess is a semi-ellipsoid. The Japanese patent does disclose the recess - at a, is a semi-ellipsoid - see figures 11-13. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the semi-ellipsoid recess of the Japanese patent, so as to allow for the mound to be capable of holding a seed.

Referring to claim 5, the British patent further discloses the mold is formed of a truncated cone - see at 1, forming lateral walls of the mold - see figure 1, a surface at the center of the mold - at 6, a connecting surface - at 4,5, forming the bottom of the mold between the truncated cone and the surface extending from the connecting surface towards the inside of the truncated cone in order to produce the recess at the top of the mound - see figures 1-4, and a covering plate - at 3 or 11, for the mold - see figure 1. The British patent does not disclose the surface is a semi-ellipsoid. The Japanese patent does disclose the surface forming the aperture in the mound is semi-ellipsoid - see at 9 in figures 7-10. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the semi-ellipsoid recess of the Japanese patent, so as to allow for the mound to be capable of holding a seed.

Referring to claim 6, the British patent as modified by the Japanese patent further discloses the surface - at 6 is removable - see figure 1 of the British patent.

Referring to claim 7, the British patent as modified by the Japanese patent further discloses the connecting surface descends from the truncated cone towards the surface – see figures 1-2 and 4 of the British patent.

Referring to claim 8, the British patent as modified by the Japanese patent does not disclose the connecting surface is a truncated cone. However, it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by the Japanese patent and add the connecting surface being a truncated cone, so as to allow for the connecting surface to be attached in the mold.

Claims 4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the British patent as applied to claim 1 above, and further in view of Beckham.

Referring to claim 4, the British patent further discloses producing a mound - see figures 1-4, placing a plantlet and its clod in the recess - see figures 1-4, and the clod and the recess have complementary shapes - see figures 1-4. Beckham does not disclose placing the plant and clod in the hole in the mound cover. Beckham does disclose placing the plant and clod in the hole in the mound cover – see figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Referring to claim 9, the British patent does not disclose the mound cover comprises a truncated cone, forming the lateral walls of the mound cover, a top surface forming the top of the mound cover in that the top surface is provided with an opening for access to the recess. Beckham does disclose the mound cover comprises a truncated cone – see at 16,20, forming the lateral walls of the mound cover – see figures 1 and 4, a top surface forming the top of the

mound cover in that the top surface is provided with an opening for access to the recess – see at 14,15 in figures 1 and 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Referring to claim 10, the British patent as modified by Beckham further discloses the top surface descends from the truncated cone – see at 14,15 in figures 1 and 4 of Beckham, towards the opening - see figures 1 and 4 of Beckham. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the British patent and add the mound cover of Beckham, so as to allow for the shape of the mound to be maintained.

Referring to claim 11, the British patent as modified by Beckham does not disclose the top surface is a truncated cone. However, it would have been obvious to one of ordinary skill in the art to take the device of the British patent as modified by Beckham and add the top truncated cone, so as to allow any liquid in the device to flow down towards the plant/flower/tree in the device.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to methods/devices for forming mounds in general:

U.S. Pat. No. 2,757,841 to Chapman – shows soil mold

U.S. Pat. No. 4,034,508 to Dedolph - shows soil mold

U.S. Pat. No. 5,209,014 to Teichmann – shows soil mold

JP Pat. No. 3,7511 – shows soil mold

CA Pat. No. 2427494 – shows soil mold

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643